THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.E.N.PATRUDU

–

W.P.NO.4455 of 2005

–

–

Between:

Gulani Shamemuddin … Petitioner

And

The Commissioner of Police, Hyderabad and

2 others. …Respondents

–

–

–

–

–

–

–

ORDER: (Per Hon'ble Sri Justice M.E.N.Patrudu,)

1.00 **FACTS**

1:01 This is a case of desertion.

1:02 The deserter is a Constable working in Andhra Pradesh Police.

1:03 Long unauthorized absence leading to disciplinary action resulted in dismissal of the deserter from service.

1:04 Being aggrieved, the deserter approached the State Administrative Tribunal.

1:05 The Tribunal confirmed the orders of dismissal.

1:06 The legality of the said order is now questioned.

1:07 The deserter is hereinafter referred to as the petitioner.

1:08 **ADMITTED FACTS**:

The appointment of petitioner as Police Constable in June, 1979 and his subsequent training, posting, regularization, probation.

Admittedly, he was absent from duty during 10.6.1987 to 22.1.1989 and it is continuous without applying or sanction of any kind of leave.

2:00 **CASE OF PETITIONER**:

He was absent due to sickness as he developed chest pain on 10.6.1987 and he obtained sick passport from the concerned Inspector of Police and was treated at Osmania General Hospital from 10.6.1987 to 10.8.1987 and as directed he used to mark in sick attendance at Begumpet P.S.

It is also his case that R.M.O., Osmania General Hospital referred him to mental hospital from 11.8.1987 to 22.1.1989 and accordingly he was treated at Government Hospital for Mental Care, Hyderabad and he had produced the medical certificates but they were not considered.

2:01 **PRAYER**:

The prayer of the petitioner is to quash the order of the Tribunal as illegal, improper, unjust, arbitrary and direct the Commissioner of Police, Hyderabad, (the first respondent) to reinstate him into service with all consequential benefits.

300 **CASE OF RESPONDENTS**:

3:01 The Joint Commissioner of Police, Administration, filed counter on behalf of the respondents wherein it is admitted that the petitioner was appointed as Police Constable on 14.6.1979 and a sick passport

was issued on 10.6.1987 by the Inspector of Police, Moghalpura P.S with instructions to report before the R.M.O., Osmania General Hospital for treatment and give sick attendance at the nearest police station and after treatment he should report to duty along with medical certificate.

3:02 The main contention of the respondents is that after taking treatment from the Osmania General Hospital, the petitioner ought to have reported back to the parent Police Station along with medical certificate and sought for sanction of leave for the period for which he was treated and so also for the period for which he was advised for further treatment, but contrary to it he remained absent continuously till 22.1.1989 and it is unauthorized absence and hence he was declared as “deserter” vide D.O.No.324, dated 4.7.1988 by the concerned Deputy Commissioner of Police.

3:03 It is also stated that the petitioner has received the desertion order on 10.7.1988, but he had neither responded to the duty nor sent any reply and continued to be absent till 22.1.1989.

3:04 Hence, an enquiry was ordered as per the provisions of A.P.C.S (CC&A) Rules, 1963 and the enquiry officer was appointed on 23.9.1988.

3:05 Thereafter, the petitioner reported for duty on 23.1.1989 and he was taken on duty.

3:06 It is further stated that thereafter the petitioner participated in the enquiry and reasonable opportunity was given to him to produce relevant documents if any or examine witnesses of his choice but he failed to do so.

3:07 The enquiry officer submitted final report holding that the charges are proved.

3:08 The first respondent agreed with the findings of the enquiry report. A copy of the enquiry report was sent to the petitioner calling for his explanation. He submitted his explanation. Unsatisfied with the

explanation, the first respondent issued orders of dismissal through D.O.3585, dt.14.10.1992 and it is speaking order.

3:09 The petitioner presented an appeal before the 2nd respondent, the Director General Police, who considered all the contentions and rejected the prayer for reinstatement.

3:10 Thereafter the petitioner filed a revision before the State, the 3rd respondent, the Principal Secretary, Home. The revision was rejected.

3:11 Then he approached the Tribunal. The Tribunal also rejected the said prayer for reinstatement.

4:00 **ARGUMENTS**:

4:01 In support of the writ, the learned counsel submitted that the order of the Tribunal is clearly erroneous as the petitioner could not attend to duty due to sickness and on humanitarian grounds the same should have been considered. It is also contended that there was no malafide intention for the petitioner to abstain from duty and due to reasons beyond his control he was unable to attend.

4:02 In response, the learned Government Pleader for Home appearing on behalf of the respondents submitted that the unauthorized absence is from 10.6.1987 to 22.1.1989 nearly 19 months and even if two months treatment in the Osmania General Hospital i.e., from 10.6.1987 to 10.8.1987 is excluded the petitioner was absent for more than 17 months. It is also contended that there is no public document to prove that the petitioner was either an inpatient in the Mental Hospital or he has taken treatment as out patient from the said hospital.

5:00 **POINT**:

The short point for our consideration is: Whether the order of dismissal as confirmed by the Tribunal is illegal and the petitioner is entitled for reinstatement?

6:00 **DECISION:**

6:01 The petitioner was absent from 10.6.1987 to 22.1.1989. He did not apply for sick leave. There is no proceeding in his favour granting any kind of leave during this period. He was declared as deserter.

6:02 Rule 184 of the A.P.Police Manual (Part-I, Volume-I) deals with desertion as under:

> "Absence without leave for more than 21 days amount to desertion, after which the officer will be declared a deserter. An order declaring the officer a deserter will be passed and served on the officer, or sent to him by registered post, acknowledgement due to this address on record. In that order it should be specifically mentioned as follows:
>
> > "If you have the intention of joining the duty, you should report before the Superintendent of Police, District Chief of Police/ Deputy Commissioner of Police/Commandant immediately for enquiry"
>
> If, within two months from the date of desertion or one month from the date of issue of the order declaring him as deserter, whichever is later, the officer reports before the SP or DCP concerned with a request to take him to duty in response to the order declaring him deserter, he should be taken to duty and placed under suspension, if necessary, depending on the facts of the case, pending enquiry into his conduct. Discretion should be exercised in placing an officer under suspension. A charge will be framed against him, an oral enquiry conducted and orders passed on the merits of the case. If the officer does not report before the SP, within the period specified above, or if the order declaring him a deserter is returned undelivered, a charge should be framed immediately fixing a date for the oral enquiry, and sent by registered post, acknowledgement due, to his address on record. If returned undelivered or if, having received the memorandum of charge, the deserter fails to attend on

> the date specified in the memorandum, or if his whereabouts are unknown and could not be ascertained, an ex-parte oral enquiry should be held and orders passed on the OE file. If the deserter reports before the SP after the above stipulated period but before the completion of the OE against him, he shall be taken to duty and placed under suspension if necessary pending enquiry against him."

6:03 In the instant case, the order of desertion was issued on 4.7.1988 by the Deputy Commissioner of Police (South Zone), Hyderabad.

6:04 We have minutely examined the said order. It is clearly stated that the petitioner is in continuous absence for a period more than 21 days and as such he is declared as deserter and he is directed to join duty within two months from the date of desertion or one month from the date of issuing the order whichever is later.

6:05 Having acknowledged the desertion order, the petitioner neither reported to duty nor responded to the desertion order.

6:06 We hold that it is gross negligence and it is a grave misconduct.

6:07 A domestic enquiry was initiated and the Assistant Commissioner of Police was appointed as enquiry officer.

6:08 We have perused the charge. It is properly drafted. An opportunity was given to the petitioner to submit his explanation. The petitioner submitted his explanation on 29.9.1989 wherein he has stated that he was sick on 10.6.1987 and he took treatment at Osmania General Hospital from 10.6.1987 to 10.8.1987 and from 11.8.1987 to 22.1.1989 he has taken treatment at Government Hospital for Mental Care, Hyderabad. He also stated that he was referred to Mental Hospital by the R.M.O., Osmania General Hospital.

6:09 Surprisingly, he has not produced any such document to establish that he was referred by R.M.O., to Mental Hospital. So also he did not produce any record from Mental Hospital. He has

produced a letter issued by Dr.Niranjan Reddy.

6:10 During the course of enquiry, a report was obtained from the Superintendent, Government Hospital for Mental Care wherein it is clarified that the letter produced by the petitioner alleged to have been issued by Dr S.Niranjan Reddy is issued during a private consultation and it is not an official document and it is not a medical certificate and it is only a psychological report after conducting some tests and it is not a medical certificate.

6:11 Further during the enquiry witnesses were examined. The petitioner did not choose to cross-examine them. He did not produce any defence witnesses or any inpatient or outpatient and thereby the enquiry officer held him guilty.

6:12 The 1st respondent being the disciplinary authority having received the enquiry report and the explanation of the petitioner has passed a speaking order in DO No.3585 dt.12.10.1992 wherein it is clearly noted the reasons for accepting the enquiry report and rejecting the representation of the petitioner. It is stated that the petitioner is absent for 1 year 5 months continuously without informing his whereabouts and did not seek any leave and he did not care to even think about his monthly salary and therefore he has no interest to serve the Department and accordingly he is dismissed him from service.

6:13 We have minutely gone through the dismissal order, the order in appeal and the order of revision. All the orders under challenge are speaking orders issued by competent authorities by assigning valid reasons and well drafted and not ill-drafted. The department enquiry was conducted by following the entire procedure laid down in A.P.C.S (CC&A) Rules. Reasonable opportunity was given to the petitioner to defend himself.

6:14 Considering the above, the Tribunal held that the charge is proved.

6:15 In our considered opinion, the order of the Tribunal is sustainable.

6:16 Looked at from any angle, the impugned order is defensible and it is not liable to be set aside by this Court for any reason whatsoever may be. We do not find any merit in the writ petition. Thus, we confirm the disciplinary action taken against the petitioner.

6:17 The petitioner has pleaded that his absence is due to sickness hence some lenience may be shown. Hence, we are of the opinion that the punishment of dismissal, which will deprive him all the benefits, can be modified suitably. Therefore, the punishment of dismissal is accordingly converted to that of compulsory retirement; thereby the petitioner will be eligible for the retirement benefits for the service rendered by him prior to his unauthorized absence.

6:18 The writ petition is disposed of to the extent indicated above. No order as to costs.

_____

(J.CHELAMESWAR, J.)

_____

(M.E.N.PATRUDU, J.)

03-2.2006

Note: L.R. copy to be marked

B.O.

kpr